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CASD Memo No. 2021-04 (Correction - 2021-05)

To: Excavators and Operators of Underground Facilities

From: Derek D. Davidson Director, Consumer Assistance & Safety Division (CASD)

Re: Recent Changes to the Commission's Underground Facility Damage Prevention Requirements, Chapter 895

Date: September 2, 2021

The purpose of this memo is to make excavators and operators aware of recent changes in statute and the Commission's Underground Facility Damage Prevention Requirements, Chapter 895 (rule). During its 2019 session, the Legislature enacted "An Act to Amend the So-called Dig Safe Law" which requires excavators to immediately report by calling 9-1-1 if contact with, or damage to, an underground pipe or another underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (U.S. DOT, PHMSA). P.L. 2019, c. 322. During its 2020 session, the Legislature enacted "An Act to Make Changes to the So-called Dig Safe Law" P.L. 2019, c. 592 (Act). The Act makes liquefied propane gas (LPG) distribution systems that have underground pipes subject to the Dig Safe Law and increases the administrative penalties for violations of the law. To implement these statutory changes and to make additional housekeeping changes to the rule, the Commission initiated a rulemaking in November of 2020 and adopted the rule changes on June 29, 2021.

➤ Section 4(D)(2) and 6(C)(1) of the rule now require an excavator and/or operator to notify the Commission of a Damage Prevention Incident¹ by either calling or emailing the

¹ "Damage prevention incident" means an occurrence in which one or more provisions of the Dig Safe law are violated, regardless of whether there is damage to underground facilities.

Commission *as soon as possible* after an incident occurs.² This notice is in addition to the written notice that must be provided to the Commission within 10 days of the incident. Excavators and operators typically do this now and the Commission has found it to be good practice. It enables Commission staff to investigate an incident right away and helps to ensure that, for example, a road has not been paved over in the 10 days that it may take the excavator or operator to submit the written incident report. The phone number that excavators and operators should use when reporting an incident is **207-287-3831** and the email address is IncidentReport.PUC@maine.gov.

- Section 4(D)(3) of the rule now requires excavators to immediately call 9-1-1 if contact with, or damage to, an underground pipe or another underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, consistent with P.L. 2019, c. 322.
- Section 6(B)(1) of the rule now allows operators to use text messaging to notify an excavator, in addition to facsimile or email, that there are no facilities in the proposed excavation area that it is obligated to mark.
- Section 8(D)(1) of the rule increases the maximum penalty amount that can be assessed pursuant to the rule from \$500 to \$1,000 for a first violation and from \$5,000 to \$10,000 for subsequent violations, consistent with P.L. 2019, c. 592.

Copies of the revised rule can be found at the Commission's website at <https://www.maine.gov/mpuc/legislative/rules/part8-multi.shtml>. See Chapter 895.

If you have any questions regarding this memo, please feel free to contact me at derek.d.davidson@maine.gov or by phone at 207-287-1596.

² On May 25, 2021, Resolves 2021, Chapter 16 became effective. The law authorized the final adoption of the rule with the following modification: the rule must be amended in section 4(D)(2) to clarify that a damage prevention incident may be reported by an excavator to the Commission via e-mail. The required change was made to the rule. The Resolve did not contain a corresponding provision for reports by an operator. Because there is no rationale for differing reporting requirements for excavators and operators, and a discrepancy in the reporting requirements of the rule could create confusion, the Commission intends to make the same change to Section 6(C)(1) for operators the next time it opens the rule. In the meantime, the Director of CASD has issued a waiver to allow operators to also report an incident via e-mail in addition to completing the written incident report.